

Washington 25

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B-88872

March 10, 1950

The Honorable
The Secretary of the Army

My dear Mr. Secretary:

There has been considered your letter of August 29, 1949, with enclosures, requesting decision as to whether the Regular Army commission of Colonel John R. Noyes was vacated under the provisions of section 1222, Revised Statutes, 10 U.S.C. 576, "upon his appointment by the Secretary of the Interior to the office of Commissioner of Roads for Alaska." In an opinion dated August 1, 1949, the Judge Advocate General of the Army concluded that Colonel Noyes "may have" vacated his commission in the Army upon "assumption of the civil office" of Commissioner of Roads for Alaska and the exercise of the functions pertaining thereto.

Section 1222, Revised Statutes, 10 U.S.C. 576, provides as follows:

"No officer of the Army on the active list shall hold any civil office, whether by election or appointment; and every such officer who accepts or exercises the functions of a civil office shall thereby cease to be an officer of the Army, and his commission shall be thereby vacated."

Section 2 of the act of January 27, 1905, 33 Stat. 616, as amended (48 U.S.C. 321), established a board of road commissioners in the Territory of Alaska, to be composed of an engineer officer of the U.S. Army to be "detailed and appointed" by the Secretary of War, and two other officers of the Army. The statute further provided that said board shall have the power, and it shall be their duty, upon their own motion or upon petition, to locate, lay out, construct, and maintain wagon roads, pack trails, etc., if in their judgment such roads or trails are needed. The said board was authorized to prepare maps, plans, and specifications for every road or trail they may lay out, and to accept or reject bids for such work. However, the act of June 30, 1932, 47 Stat. 446, 48 U.S.C. 321a, provided that from and after the passage of that act the duties authorized and authority conferred by law upon the board of road commissioners of the Territory of Alaska, and upon the Secretary of War, by the act of January 27, 1905, as amended, "are hereby transferred to the Department of the Interior, and shall hereafter be administered by the Secretary of the Interior, or under his direction, by such officer, or officers, as may be designated by him." Pursuant to such statutory authority the Secretary of the Interior on October 4, 1948, defined the purpose, organization, and duties of the Alaska Road Commission, in part as follows (Federal Register, October 1948, Vol. 13, Part 10, page 5954):

"2. Purpose. The Alaska Road Commission shall be responsible for the location, design, construction, repair, and maintenance of roads,

Army
review(s)
completed.

ASSISTANT COMPTROLLER GENERAL OF THE UNITED STATES

Washington 25

B-53019

November 2, 1945

The Honorable,

The Secretary of War.

My dear Mr. Secretary:

Consideration has been given your letter of October 8, 1945, as follows:

"An opinion is requested as to whether during terminal leave prior to retirement Lieutenant General Eugene Reybold, former Chief of Engineers, can accept employment with the State of Delaware as described below without thereby vacating his commission under R. S. 1222, 10 U. S. C. 576, or violating some other statute, thus affecting his retirement pay or other amounts payable to him by this Department.

"General Reybold began four months terminal leave on 30 September 1945 prior to being placed on the retired list under the provisions of Sec. 5 of the Act of Congress approved 31 July 1935 as amended by Sec. 3 of the Act of Congress approved 13 June 1940 (Public No. 612, 76th Congress) and Sec. 4 c of the National Defense Act as amended by the Acts of Congress approved 4 June 1920 and 14 October 1940.

"The nature of his proposed employment with the State of Delaware is as follows: The State plans to erect either a bridge or tunnel across the Delaware River under the general supervision of the State Highway Commission. He is offered employment with the State where he as consulting construction engineer he assumes the management and direction of the construction of this project. He will not be appointed to any presently existing position in the State Highway Commission or any other Division or Branch of the State Government. The employment is for the construction of this particular project only and will terminate upon its completion. He will have neither predecessor nor successor in the job.

"Under the terms of his employment he will be compensated on a monthly basis during the period of construction of the project. The compensation is not fixed by law. There is no title fixed by law covering the employment. An oath of office will not be required, and the job is not under civil service. It is not considered that the employment could properly be designated as an 'office'.

"The State of Delaware desires to begin the construction within a short time and he therefore desires to enter upon the employment immediately, and prior to the expiration of his terminal leave.

COMPTROLLER GENERAL OF THE UNITED STATES

Washington 25

B-50542

August 20, 1945

The Honorable,

The Secretary of War.

My dear Mr. Secretary:

I have your letter of July 31, 1945, as follows:

"Since the War Department is desirous of issuing proper and comprehensive advice to military personnel who may seek employment with the United Nations Relief and Rehabilitation Administration your decision was requested, under date of 14 June 1945, as to whether employment of military personnel by that administration, while on terminal leave or in a retirement status, would serve to subject such personnel to the prohibitions contained in the dual office or dual compensation laws cited in my letter, or result in the vacation of their Army commissions under R. S. 1222.

"In reply to my request for decision there was received in the War Department your decision B-50542, dated 11 July 1945, wherein in connection with the provisions of R. S. 1222 it was held that 'an officer of the Army is "on the active list" during authorized leave of absence whether the leave be taken during active service or as terminal leave immediately prior to final discharge from the active service', and that 'the acceptance of an officer or position with the United Nations Relief and Rehabilitation Administration by an officer of the Army on the active list during terminal leave from the military service would vacate his commission as an Army officer effective the day he accepts the civil office'.

"In view of the opinions of the Attorney General of the United States in 22 Op. Atty. Gen. 88 and 39 Op. Atty. Gen. 197, which hold that Section 1222 of the Revised Statutes is applicable only to officers of the Regular Army, doubt has arisen as to whether the decision of your office of 11 July 1945, supra, unqualified as its language is where reference is made to 'an officer of the Army', is to be deemed to include officers of the National Guard, Reserve Corps, or of the Army of the United States, or is to be construed as limited only to officers of the Regular Army in accordance with the views of the Attorney General expressed in the opinions cited supra. Your decision is therefore requested as to the proper interpretation to be placed on the decision of 11 July 1945 in this respect, and in view of the fact that replies to inquiries received, as well as the issuance of instructions to disbursing